

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(Honolulu, Hawaii)

PFLUEGER AUTO GROUP, LLC

Employer

and

INTERNATIONAL LONGSHORE & WAREHOUSE  
UNION, LOCAL 142, AFL-CIO

Petitioner

37-RC-4120

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 1/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 2/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 3/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 4/

All full-time and regular part-time journeymen service technicians, intermediate service technicians, beginning service technicians, lube technicians, service lot technicians, sales lot technicians, parts counter sales technicians, parts counter technicians, parts warehouse clerks, and parts delivery drivers employed at the Employer's facility at 1234 South Beretania Street, Honolulu, Hawaii; and excluding all other employees, service writers, service clerks, service cashiers, parts administrative clerk, all independent contractors, accounting/finance department employees, office clerical employees, confidential employees, managerial employees, watchpersons, guards and supervisors as defined in the Act.

**DIRECTION OF ELECTION**

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated

payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **INTERNATIONAL LONGSHORE AND WAREHOUSE UNION, LOCAL 142, AFL-CIO.**

### **LIST OF VOTERS**

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB. Wyman-Gordan Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Subregion 37 Office, 300 Ala Moana Boulevard, Room 7-245, Post Office Box 50208, Honolulu, Hawaii, on or before November 14, 2005. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by November 21, 2005. 5/

Dated November 7, 2005

at San Francisco, California

/s/ Joseph P. Norelli  
Regional Director, Region 20

- 1/ The parties stipulated, and I find, that the Employer, which has a facility located at 1234 South Beretania Street, Honolulu, Hawaii, is a limited liability corporation engaged in the retail sales and service of automobiles and trucks. Based on a projection of its operations since about February 1, 2005, the Employer will annually derive gross revenues in excess of \$500,000 and will purchase and receive goods valued in excess of \$5,000 directly from suppliers located outside the State of Hawaii. Based on the parties' stipulation to such facts, and the record evidence, I find that it will effectuate the policies of the Act to assert jurisdiction in this matter.
- 2/ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
- 3/ The parties stipulated, and I find, that there is no contract bar to this proceeding.
- 4/ The Petitioner seeks to represent a unit comprised of all full-time and regular part-time journeymen technicians, intermediate technicians, beginning technicians, lube technicians, service lot technicians, sales lot technicians, parts counter technicians, parts retail counter technicians, parts beginning retail counter technicians, parts warehouse clerk/warehousemen and parts delivery drivers employed by the Employer at its 1234 South Beretania Street, Honolulu, Hawaii facility; excluding all sales employees, independent contractors, accounting/finance department employees, clerical employees, confidential employees, managers, watchpersons/guards and supervisors as defined in the Act. The petitioned-for unit consists of approximately 34 employees.

The Employer contends that to be appropriate, the unit must also include four service writers, six service clerks and cashiers, and one parts administrative clerk and must exclude the four sales lot technicians sought by the Petitioner. There are about 41 employees in the unit urged by the Employer. Contrary to the Employer, the Petitioner asserts that the service writers and Service Clerk Raynette Balocon should also be excluded from the unit as statutory supervisors. It takes the position that the petitioned-for unit is an appropriate unit without the inclusion of the service clerks, cashiers, and parts administrative clerk. Lastly, the Petitioner asserts that Lot Technician Sola Letoa should be excluded from the unit because he is not an employee of the Employer. The Employer takes a contrary position on these issues.

For the reasons discussed below, I find that the petitioned-for unit is an appropriate unit and that the service writers, service clerks, service cashiers and the parts administrative clerk do not share such a substantial community of interest with unit employees to require their inclusion in the unit. I also find, for the reasons addressed in a separate footnote below, that the service

clerks and Service Clerk Raynette Balocon are not statutory supervisors. Further, I find that Service Lot Technician Sola Letoa is an employee of the Employer and properly included in the unit.

Stipulations. The parties stipulated, and I find, that Acting Service Manager Keith Takenouchi and Parts Manager Eric Hiramoto have the authority to hire, fire and discipline employees and are supervisors within the meaning of Section 2(11) of the Act.

Facts: The Employer has several auto dealerships in the State of Hawaii, including the General Motors (GM) dealership at issue herein where it sells and services the following GM models: Cadillac, Hummer, Buick, and GMC. The Employer took over the GM franchise at this facility after the previous holder of the franchise operating at the same location, Schuman Carriage Motors, Inc. (Schuman), sold the franchise back to GM in the fall of 2004. The Employer purchased the franchise from GM, and began operating at Schuman's former location on February 1, 2005.

Schuman had a collective-bargaining relationship with the Petitioner for many years, and the record contains the collective-bargaining agreement between Schuman and the Petitioner, which was effective from October 1, 2000 to September 30, 2003, (the Agreement), and covered all of Schuman's employees except executives, professional employees, supervisors, auto salesmen, service salesmen, outside parts salesmen, dispatchers, confidential employees, industrial relations employees and personnel department employees, watchmen, guards, police, office clerical employees and students with less than 90 days of employment or 5000 hours of work.

The Schuman Unit included service technicians, parts employees, lube men, warehousemen, utility polishers, delivery drivers, customer parking employees, car cleaners/washers, lot boys, janitors, utility persons, clerk aides, junior clerk typists and clerk IIIs. The Schuman Unit also included body shop employees and painters. However, as the Employer has contracted out such work, it is not an issue in this case. The record shows that the position of service salesman that was excluded from the Schuman unit is comparable to the position of service writer employed by the Employer. The record further shows that Employer Service Writer Christopher Seabert and Service Clerk, Stanley Ohama, the latter of who substitutes as a service writer and formerly held that position, were both previously employed by Schuman as service salesmen and excluded from the Schuman Unit under the Agreement.

Lastly, the record shows that the clerk aide, junior clerk typist and clerk III, which were classifications covered under the Schuman Agreement, were employed in the parts department at Schuman. However, the record does not

indicate the nature of the jobs performed by employees in these classifications and whether they are comparable to the Employer's parts counter sales technicians, parts counter technicians or the parts administrative clerk, the latter of which is a disputed position in this case.

Managerial Hierarchy. Fixed Operations Director Kenneth Ching manages the Employer's service and parts departments. The sales department is separately managed by Sales Director Dan Keppel. Reporting to Ching are Acting Service Manager Keith Takenouchi and Parts Manager Eric Hiramoto, both of whom are stipulated to be statutory supervisors. At the time of the hearing, Takenouchi was in training to become the permanent service manager. Ching is in charge of the service department when Takenouchi is not present and the two jointly make personnel decisions for the service department.

The Physical Layout of the Employer's Facility. The Employer's facility is located on South Beretania Street in Honolulu. Facing the street is a two-story building with parking on the second level, which houses the Employer's sales showroom and several offices, including those for Operations Director Ching; Service Manager Hiramoto; sales employees; and service office employees (i.e., the service clerks and service cashiers whose unit placement is disputed). Behind this building is a single level building housing the service technicians' work area, which has several service bays. At one end of the service building is an area where the service writers whose unit placement is disputed work at computer work stations. Behind the service building is a two-story parts building with parking on the second level. The first floor of the parts building includes a parts receiving area, a technician's counter and a retail parts counter where customers can purchase parts. The first floor area is where the counter sales employees and technician sales employees and warehouse clerks work, whom the parties agree belong in the unit. On the second floor is the office of Administrative Clerk Trisha Barros, whose unit placement is disputed. Outside of the parts building is a car wash area used by the service lot technicians to wash cars of service department customers; across the driveway from the service car wash area is a separate car wash area used by the sales lot technicians to wash new cars. As noted above, the unit placement of the sales lot technicians is also disputed.

The Service Department. The service department is managed by Operations Director Ching and Acting Service Manager Takenouchi. It consists of three service writers, 16 service technicians, one lube technician, seven service clerks and cashiers, and six service lot technicians. As discussed below, in addition to these employees, one of the service clerks and cashiers, Stanley Ohama, substitutes for the service writers for an undisclosed portion of his work time.

The Operation of the Service Department. The service department operates Monday through Friday and is closed on weekends. The record shows that service department customers generally telephone in advance to schedule appointments with the Employer's service clerks. At the time of their appointments, the customers drive their cars into the service writers' area. A service writer greets them and takes them to his work station, where he inputs their information into a computer. After the service writer has taken all of the necessary information from a customer, he generates a repair order, which the customer signs to authorize the work. A service lot technician places paper mats and seat covers in the customer's car and drives it into the service area.

Each service writer heads a team of service technicians. As the service technicians arrive at work at their staggered starting times, the service writers assign work orders to them based on their skills and abilities. Service technicians diagnose car problems, and check at the parts counter to see if the necessary parts are in stock and what they cost. The service technician informs the service writer what work needs to be done and the availability and cost of parts for the job. The service writer then assigns a number of hours to the job, using a labor time guide book, which lists the number of hours allotted for specific types of work, and contacts the customer to obtain authorization for the work. If the customer gives his authorization, the service writer notifies the service technician to proceed with the work and the service technician then performs the mechanical work on the car. During the day, the service writer also checks with the service technicians on his team to find out how their work is progressing. When a service technician completes a job, he gives the service writer a description of the work he has performed and the service writer translates that description into layman's terms for the customer. The service writer generates a bill for the customer, which is printed out at the service cashier's office. The customer speaks to the service writer if he has any questions about the work performed and/or goes directly to the service cashier to pay the bill and pick up his car, which is retrieved by the service lot technicians.

The Service Writers and Service Technicians. As indicated above, each of the service writers heads a team of five or six service technicians and assigns work to them, according to the type of work involved and the skill levels and abilities of the service technicians. The service writers have received no special training to make such work assignments and they confer with Acting Service Manager Tagenouchi if they have any questions about an assignment. The record does not disclose the specific training, skills, experience or specialties of the service technicians or what type of certifications they possess, except that one of them is a lube technician. As noted above, the record discloses that the service technicians start work at

staggered starting times and that their work schedules are set by Tagenouchi and not by the service writers.

Fixed Operations Director Ching testified that the service writers are authorized to assign job orders to the service technicians, to direct them to do their work, and to correct any errors they make. The record establishes that the service writers have no independent authority to schedule work hours; authorize or approve vacation, time off or overtime; hire; promote; discipline; or terminate employees. If the service writers encounter a problem with a service technician, they attempt to informally resolve the matter with the service technician or report the situation to Tagenouchi, who, together with Ching, handles all disciplinary matters. The record contains no evidence that any service writer has ever been involved in a personnel matter affecting any employee, except with regard to the assignment of work orders to the service technicians.

The record contains the business card of Service Writer Sean Izutsu which reflects that his job title is that of assistant service manager. In this regard, Operations Director Ching testified that the Employer made the business cards for the service writers; that the service writers are also called assistant service managers; and that this title was given to them in order to "give the customer a feeling that they are dealing with somebody with more authority."

There is no evidence of any temporary or permanent interchange between the service technicians and the service writers or vice versa, or that any of the service writers have ever had any experience or training as service technicians or vice versa.

The Service Lot Technicians. With the exception of Service Lot Technician Sola Letoa, whose unit placement is disputed, the parties agree that the service lot technicians should be included in the unit. The Employer has six service lot technicians, who are in the service department under Tagenouchi's supervision. Their job is to move customers' cars into the service bays, to retrieve cars when customers come to pick them up, and to provide a shuttle service for customers. The service lot technicians also dispose of trash for the service technicians and sometimes wash cars for the service department. Ching testified that, unlike the service technicians, the service lot technicians are not required to have any particular skills or training and are not required to supply their own tools. Most of their work assignments come from Tagenouchi or from the service cashiers, the latter of whom direct them to retrieve cars when customers pay their bills.

The parties dispute whether Service Lot Technician Sola Letoa, whom the Petitioner contends is not an employee of the Employer, should be included in the unit. Letoa was hired by the Employer as a service lot technician on

approximately September 30, 2005. Letoa previously worked for Rad Motor Sports, another company owned by Employer Owner Alan Pflueger. Operations Director Ching testified that since the Employer hired Letoa to work as a service lot technician at the facility herein, he has been working about eight hours a day in that job and has not worked at any other Employer facility.

The Service Office. The parties dispute the unit placement of the employees in the service office. The Employer argues that they must be included in the unit and the Petitioner takes the opposite view, arguing that they lack a community of interest with unit employees; are office clericals; and that Service Clerk Raynette Balocon is a statutory supervisor. The service office is part of the service department and is under the management of Tagenouchi. It is located on the first floor of the same building as the sales showroom, which is separate from the building where the service technicians and service writers work. Seven service clerks and cashiers work in the service office. The service clerks and cashiers perform various functions, including answering telephones; routing calls to the service writers; scheduling customer appointments; cashiering for the service department; and handling warranty and other types of service department paperwork. The service office has a doorway that is across a parking area from the side of the building where the service writers work. The record shows that the service clerks and cashiers sometimes walk over to the service writers to check on the status of repair jobs and/or to escort customers to the service writers.

As indicated above, Service Clerk Stanley Ohama formerly worked as a service writer. Ohama continues to substitute for the service writers on an as needed basis. The amount of time that Ohama spends performing service writer work varies from day-to-day. However, the record does not disclose how much of his overall work time is spent performing such work. Ohama has an office located in the same area where the other service clerks and cashiers work. He is salaried and receives the same benefits as the petitioned-for employees. The record does not disclose his salary level.

Raynette Balocon works as an assistant to Service Manager Takenouchi. Balocon performs service clerk and cashier work; answers the questions of other service clerks about how to prepare their paperwork; and ensures that all invoices have the necessary documents attached. She does not schedule or assign work to other employees and there is no evidence that she possesses any other type of supervisory authority. There is also no evidence that she is involved in any labor related matters or performs any duties for Balocon other than checking on the training levels required for the service technicians and scheduling training classes for them. Balocon is salaried and paid the same benefits as other employees. The record does not disclose her salary level.



With regard to the interchange and contact among service clerks cashiers, and other employees, Fixed Operations Director Ching testified that service clerks and cashiers primarily interact with the service writers. There is no evidence of permanent or temporary interchange among service clerks, cashiers, service technicians and parts employees except for the parts administrative clerk. As indicated below, Service Clerk Stanley Ohama permanently transferred to this classification from that of service writer and the current parts administrative clerk was formerly a service clerk.

Sales Lot Technicians. As indicated above, the Petitioner seeks to include the sales lot technicians in the unit and the Employer asserts that they should be excluded from the unit because they lack a community of interest with other unit employees. The Employer has four sales lot technicians who are separately managed by Sales Director Keppel. Keppel did not testify at the hearing and Ching's testimony revealed that he had little knowledge about the sales lot technicians. The record shows that the sales lot technicians move, wash and apply protection packages (i.e., paint and fabric sealant) to new cars and retrieve cars for customers. Occasionally, they also give rides to customers.

The sales lot technicians do not handle service department customers' vehicles and the service lot technicians do not handle new cars. However, the types of tasks performed by both the sales lot technicians and the service lot technicians are similar with regard to the vehicles they deal with in that both groups drive and wash cars and retrieve cars and give rides to customers. Service lot technicians also occasionally assist the sales lot technicians in moving new cars from the inventory lot to the sales area. Each group has its own car wash area separated by a driveway. The sales lot technicians do not receive directions from anyone in the service or parts departments, and there is no evidence of interchange between them and employees in these departments, except for the limited interaction described above. While the record does not disclose the work schedules of the sales lot technicians, it reflects that the sales department is open after 6 p.m. and on weekends. The record also does not disclose the pay rates of the sales lot technicians. However, it reflects that they are hourly paid; punch the same time clock as the service clerks, service cashiers and service writers; and receive the same benefits as other unit employees. It is unclear from the record whether there are other classifications of employees in the sales department in addition to the sales lot technicians and the salesmen.

The Parts Department. With the exception of the unit placement of Parts Administrative Clerk, Trisha Barros, discussed below, the parties agree that the parts department employees should be included in the unit. The parts department is located in a separate two-story building behind the building

where the service writers and service technicians work. It is open Monday through Friday, from 7 a.m. to 5:30 p.m. The parts department includes counter sales employees, technician counter employees, warehouse clerks, a delivery driver and an administrative clerk. Parts Manager Eric Hiramoto heads the department, which together with the service department, is under the overall management of Fixed Operations Director Ching.

The employees in the parts department perform the following work: counter sales employees sell parts to walk-in retail customers; technician counter employees respond to the inquiries of service technicians and provide parts to them; warehouse clerks work in the back of the parts receiving area receiving and storing parts; and the parts delivery driver spends half his work time away from the facility delivering parts and the other half working in the parts receiving area performing the same functions as the warehouse clerks. The work of the parts administrative clerk is discussed below.

The Employer contends that Parts Administrative Clerk Trisha Barros should be included in the unit and the Petitioner seeks her exclusion, arguing that she lacks a community of interest with the petitioned-for employees substantial enough to require her inclusion in the unit. Barros has an office on the second floor of the parts building near the office of Parts Manager Hiramoto. She was formerly a service clerk and she voluntarily transferred to the position of parts administrative clerk. At the time of the hearing, Barros was on maternity leave and Parts Manager Hiramoto was handling her work. There is no evidence that Barros has access to the Employer's confidential files or materials. Her work involves using a computer at a desk to place special orders for parts and to track parts for both the retail and the parts receiving areas. The warehouse clerks notify Barros when a part arrives. Barros then either delivers the part to the service writer if the car is in the shop, or notifies the service clerks to inform the customer that the part has arrived and they can make an appointment to bring their car in for servicing. Barros spends half her work time in her office and the other half interacting with parts or service department employees in other areas of the facility. Barros is salaried and receives the same benefits as the petitioned-for employees. The record does not disclose how much she is paid. Barros has never worked as a service technician or as a parts department employee in any other job classification and the record does not reflect that other employees have substituted in her position.

The job requirements for parts department employees vary. The warehouse clerks are not required to have any special skills. The driver must be able to drive and make deliveries. Barros and the technician counter employees and counter sales employees must possess computer skills, to varying degrees.

Parts employees, except for the driver and Barros, spend almost all of their work time inside the parts department building. They have a break room located on the second floor of the parts building next to the men's locker room. While the technician counter employees interact on a regular basis with the service technicians, and Barros interacts with the service writers, there is no evidence that other parts department employees (i.e., the counter sales employees, warehouse clerks or the driver) regularly interact with employees outside the parts department. Nor is there any evidence of permanent or temporary interchange between parts employees, except Barros, and any other employees.

Hours, Uniforms, Pay & Benefits. The service department and the parts department are open Monday through Friday, the service department from 6:30 a.m. to 5:30 p.m., and the parts department from 7:00 a.m. to 5:30 p.m. Both departments are closed on weekends. Both the service and parts employees work on staggered shifts. Service lot technicians work Monday through Friday, from 6:30 a.m. to 6 p.m. It appears from the record that the sales lot technicians may work after 6 p.m. on weekdays and also on weekends.

The service writers, service technicians and service lot technicians wear different uniforms. Service clerks and cashiers are not required to wear uniforms. Sales lot technicians wear uniforms that differ only slightly from those of the service lot technicians. Service writers, service lot technicians, service clerks, service cashiers and sales lot technicians all use the same time clock, which is located in the service office. The service technicians and parts employees use a separate time clock located at the parts counter in the parts department building. There is a lunch and break area on the second floor of the parts building, and there is a small break area on the second floor of the sales building where the service clerks and cashiers work.

Service writers are paid a salary plus a commission based on the total amount of labor sold by the service department. Service clerks and cashiers and the parts administrative clerk are also salaried. The service technicians are paid an hourly wage based on a flat rate system under which they are guaranteed six hours of work a day. As indicated above, the Employer uses a flat rate system that assigns a fixed number of hours for each job and pays its service technicians the hourly rate for the prescribed number of hours regardless of the amount of time it actually takes to complete a job. The lube technician, warehouse clerks and the parts department driver are paid at an hourly rate and not according to this flat rate system. The parts counter sales technicians and the parts counter technicians are paid a salary plus a commission based on the sale of parts by the parts department. Setting aside the commissions, all employees receive the same fringe benefit package.

Analysis. As indicated above, the Employer asserts that service writers, service clerks and cashiers, and the parts administrative clerk must be included in the unit, and that sales lot technicians must be excluded from it. The Petitioner contends that the Service Clerk Raynette Balocon and the service writers are statutory supervisors who must be excluded from the unit. For the reasons discussed below, I find that Balocon and the service writers are not supervisors under the Act. I also find that the service writers, service clerks, service cashiers and parts administrative clerk do not share a community of interest with the petitioned-for employees sufficient to require their inclusion in the unit; that Service Lot Technician Sola Letoa is an employee of the Employer and should be included in the unit; and that the sales lot technicians should be included in the unit.

Whether Service Clerk Raynette Balocon and the service writers are statutory supervisors.

The term “supervisor” is defined in Section 2(11) of the Act as:

[A]ny individual having authority, in the interest of the Employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 2(11) is interpreted in the disjunctive and the possession of any one of the authorities listed places the employee invested with this authority in the supervisory class. See *Providence Hospital*, 320 NLRB 717 (1996) enf'd 121 F.3d 548 (9th Cir. 1997).

To support a finding of supervisory status, an employee must possess at least one of the indicia of supervisory authority set out in Section 2(11) of the Act. *International Center for Integrative Studies*, 297 NLRB 601 (1990); *Juniper Industries, Inc.*, 311 NLRB 109, 110 (1993). Further, the authority must be exercised with independent judgment on behalf of the employer and not in a routine, clerical or perfunctory manner. *Clark Machine Corp.*, 308 NLRB 555 (1992); *Bowne of Houston, Inc.*, 280 NLRB 1222, 1223 (1986). An individual who exercises some “supervisory authority” only in a routine, clerical, perfunctory, or sporadic manner will not be found to be a supervisor. *Id.* Further, in determining whether an individual is a supervisor, the Board has a duty to employees not to construe supervisory status too broadly because the employee who is found to be a supervisor is denied the employee rights that are protected under the Act. *Hydro Conduit Corp.*, 254 NLRB 433, 347

(1981). Secondary indicia alone, such as job titles, differences in pay and attendance at meetings, are insufficient to establish that an employee is a statutory supervisor. *Laborers Local 341 v. NLRB*, supra; *Arizona Public Service Co. v. NLRB*, 453 F.2d 228, 231 fn. 6 (9th Cir. 1971); *Waterbed World*, 286 NLRB 425, 426 (1987).

Whether an individual is a supervisor is to be determined in light of the individual's actual authority, responsibility, and relationship to management. See *Phillips v. Kennedy*, 542 F.2d 52, 55 (8th Cir. 1976). Thus, the Act requires "evidence of actual supervisory authority visibly demonstrated by tangible examples to establish the existence of such authority." *Oil Workers v. NLRB*, 445 F.2d 237, 243 (D.C. Cir. 1971). Mere conclusory statements, without supporting evidence, are not sufficient to establish supervisory authority. *Sears, Roebuck & Co.*, 304 NLRB 193 (1991). Although a supervisor may have "potential powers, . . . theoretical or paper power will not suffice. Tables of organization and job descriptions do not vest [statutory supervisory] powers." *Oil Workers v. NLRB*, 445 F.2d at 243. In addition, the evidence must show that the alleged supervisor knew of his or her authority to exercise such power. *NLRB v. Tio Pepe, Inc.*, 629 F.2d 964, 969 (4th Cir. 1980). Finally, the burden of proving supervisory status is on the party who asserts that it exists. *Quadrex Environmental Co.*, 308 NLRB 101 (1992); *California Beverage Co.*, 283 NLRB 328 (1987); *Tucson Gas & Electric Company*, 241 NLRB 181 (1979).

With regard to Balocon, the record shows that she acts as an assistant to Service Manager Takenouchi, but that her only function in this regard has been to check on training requirements for the service technicians and to schedule training classes for them. She also regularly handles paperwork and cashiering work as do the other service clerks and service cashiers. The fact that she answers the questions of other service clerks and cashiers about how to handle paperwork is not evidence of her supervisory status. In sum, the record does not show that she possesses any Section 2(11) authority. Accordingly, I find that she is not a statutory supervisor.

With regard to whether the service writers are statutory supervisors, the only evidence in the record that could arguably support such a contention is that they assign work orders to the service technicians. The record shows that they possess no other Section 2(11) authority and that all personnel actions involving employees in the service department are handled by Acting Service Manager Takenouchi and by Fixed Operations Director Ching.

It is well settled that not every act of assignment of work constitutes statutory supervisory authority. As with every supervisory indicium, the assignment must be done with independent judgment before it is considered to be supervisory under Section 2(11) of the Act. Thus, routine or clerical

assignments are not supervisory, and only those requiring the exercise of independent judgment are considered as evidencing Section 2(11) authority. See *Shen Lincoln-Mercury-Mitsubishi, Inc.*, 321 NLRB 586, 594 (1996); *Providence Hosp.* 320 NLRB 717, 727 (1996).

In the instant case, the record does not establish that the service writers' assignment of work orders to the service technicians is based on the exercise of any independent judgment or is anything other than routine. For example, the record does not disclose the various skill levels of the service technicians on the teams assigned to the service writers, and whether there are marked variations in skill levels and certifications among different technicians that would necessitate the assignment of certain types of work only to certain technicians. Secondly, the service technicians report to work on staggered shifts so the assignment of work is limited by who is available to work at a particular time. In addition, there is no evidence that the service writers have any authority over the service technicians to enforce assignments of work or directions to perform work. Rather, the record shows that the service writers can only report their observations of problems to the service manager, who handles personnel matters involving the service writers together with Ching.

In sum, the burden is on the Petitioner in this case to show that the assignment of work by the service writers requires the exercise of independent judgment and it has failed to make this showing. In the absence of establishing the possession of Section 2(11) authority, the fact that the service writers are salaried and paid commissions or that they are also called assistant managers is not sufficient to establish their supervisory status. See *Shen Lincoln-Mercury-Mitsubishi, Inc.*, *supra*; *Billows Electric Supply*, 311 NLRB 878 (1993); *Davis Supermarkets*, 306 NLRB 426, 458 (1992), *enf. 2 F3d 1162 (D.C. Cir. 1993)*.

Accordingly, I find that the record does not establish that Service Clerk Balocon or the service writers are statutory supervisors.

Whether Service Writers, Service Clerks, Service Cashiers, Parts Administrative Clerk Trisha Barros, Service Lot Technician Sola Letoa and Sales Lot Technicians Should Be Included In The Unit. For the reasons discussed below, I find that the service writers, service clerks, service cashiers and parts administrative clerk do not share a community of interest with the petitioned-for employees sufficient to require their inclusion in the unit; that Service Lot Technician Sola Letoa is an employee of the Employer and should be included in the unit; and that the sales lot technicians should be allowed to vote subject to challenge.

It is well established that the Act does not require that the unit for collective bargaining be the only appropriate or the most appropriate unit, but only that it be an appropriate unit. See *Overnite Transportation Co.*, 322 NLRB 723 (1996). In deciding whether a petitioned-for unit is an appropriate unit, the

Board focuses on whether the petitioned-for employees share a community of interest. *Id.* at 724; *NLRB v. Action Automotive, Inc.*, 469 U.S. 490, 494 (1985). Relevant factors include: (1) similarity in skills, interests, duties, and working conditions; (2) functional integration of the plant, including interchange and contact among the employees; (3) the employer's organizational and supervisory structure; (4) bargaining history; and, (5) the extent of union organization among the employees. *Kalamazoo Paper Box Corp.*, 136 NLRB 134, 137 (1962); *Mitchellace, Inc. v. NLRB*, 90 F.3d 1150, 1157 (6th Cir.1996) quoting; *Bry-Fern Care Center, Inc. v. NLRB*, 21 F.3d 706, 709 (6th Cir.1994).

Application of the foregoing factors to the instant case shows that the unit sought by the Petitioner is comprised of employees who perform the manual labor involved in handling and servicing cars and handling car parts used in performing such service. By contrast, the service clerks and cashiers, service writers and parts administrative clerk all perform what is largely clerical type work that does not involve working on cars or physically handling parts, but instead involves working at a desk, using a computer, creating invoices, cashiering, handling warranty paperwork and ordering parts for the Employer. Their skills, abilities and functions are thus substantially different from those of the employees in the petitioned-for unit. Further, the duties of the service writers and service clerks and cashiers in handling billing and warranty paperwork and cashiering work are considered office clerical functions, and office clericals are generally excluded from production units. See *PECO Energy Co.*, 322 NLRB 1074 (1997); *Mitchellace, Inc.*, 314 NLRB 536 (1994); *Dunham's Athleisure Corp.*, 311 NLRB 175 (1993); *Virginia Mfg. Co.*, 311 NLRB 992 (1993).

While some of the duties performed by the excluded groupings of employees, such as ordering supplies, maintaining inventory and making appointments for customers and taking customer orders for work may be considered plant clerical type functions (*Kroger Co.*, 342 NLRB No. 20 (2004)), the fact that the clericals in this case work in separate work areas and have limited contact with the petitioned-for employees argues against the conclusion that they are plant clerical employees whose interests are aligned with those of unit employees. In this regard, I note that in cases where employees were found to be plant clericals, the Board has consistently relied upon the presence of the crucial element of significant direct contact with unit production employees in finding functional integration with the production process and a strong community of interest. On the other hand, where the Board finds employees not to be plant clericals, it has consistently relied on the absence of evidence of substantial contact with production employees to conclude that the asserted plant clericals do not share a community of interest with production employees and should be excluded from the production unit. See *In re Palagonia Bakery Co., Inc.*, 339 NLRB No. 74 (2003), and cases cited

therein. Given this consideration, as well as the other factors discussed herein, I find that the disputed employees in this case should not be considered plant clerical employees whose interests are aligned with those of employees in the petitioned-for unit.

Thus, with regard to their work areas, the service clerks and cashiers work in a building separate from that where the petitioned-for employees work and the administrative clerk works on floor separate from that where petitioned-for employees work. Although the service writers work in the same building as the service technicians, most of their work time is spent at work stations with computers in a separate area from where the service technicians perform their work.

In addition, while most of the employees in the petitioned-for unit are hourly paid and punch a time clock, the employees in the classifications the Employer would include in the unit are all salaried and the service writers are also paid a commission. The only exception is the parts counter employees, who are included in the unit based on other factors which establish their community of interest with the other petitioned-for employees and which serve to differentiate them from the employees in the disputed classifications. Thus, the parts counter sales technicians and parts counter technicians perform manual labor in handling and retrieving parts and the parts counter technicians also have frequent contact with the service technicians who confer with them about parts and obtain parts from them to use in repairing cars.

The record also establishes that the work of the employees in the petitioned-for unit is functionally integrated. Thus, the service lot technicians move the cars into position for the service technicians and the service technicians obtain parts from the parts counter technicians in order to perform their service work. Obtaining the parts is in turn dependent upon the work of the warehouse clerks who receive and store the parts. There is no evidence that any of the service writers or service clerks or cashiers or the administrative clerk have ever permanently or temporarily transferred into any of the positions in the petitioned-for unit or vice versa. Indeed, the only evidence of transfers illustrates the existence of a separate community of interest among the excluded classifications. Thus, the record shows that Service Clerk Ohama was formerly a service writer and still substitutes in that capacity, and that Parts Administrative Clerk Barros, was formerly a service clerk.

While there is evidence of regular contact between the service writers and service technicians, there is little evidence of regular contact between the service clerks and cashiers and the parts administrative clerk and the petitioned-for employees. Thus, the service clerks and cashiers spend most of their work time in a separate building, which has a separate break area.



Although the parts administrative clerk apparently has some contact with the other parts employees, the record shows that half of her work time is spent in her office working at a computer, and that the other half is spent dealing primarily with the service writers and the service clerks, again demonstrating a separate community of interest between employees in these excluded groups.

In sum, while there is some evidence of contact, particularly between the service writers and service technicians, the lack of permanent or temporary interchange and the lack of significant contact between other excluded and included employees supports a finding that the petitioned-for unit is an appropriate unit.

Furthermore, the record shows that the composition of the petitioned-for unit is generally consistent with the unit established by the prior collective-bargaining history at this facility. This history shows that as recently as 2003, the Petitioner represented a unit that included service technicians, lube men, parts employees, warehousemen, drivers and lot technicians, and excluded service salesmen. The record further shows that one of the service salesmen excluded from the Schuman unit is currently employed by the Employer as a service writer and that another former service salesman at Schuman is currently employed by the Employer as a service clerk, and still substitutes as a service writer. I also note that although the unit under the Schuman Agreement included certain clerical positions that worked in the parts department, the record does not disclose the nature of the work that individuals in these positions performed. As a result, I can reach no conclusions regarding whether these clerical positions are comparable to the administrative clerk position, whose unit placement is disputed in this case. I also note the testimony of the Petitioner's witness, that Petitioner has many collective-bargaining agreements with automotive dealers in Hawaii and none of them includes the service writer classification. In sum, I find that collective-bargaining history as well as the area pattern of bargaining in the industry generally supports a finding that the petitioned-for unit is an appropriate unit and that the service writers are properly excluded.

Lastly, I note that the extent of organization, although never deemed a controlling factor, also supports the petitioned-for unit.

In conclusion, based on the manual nature of the work performed by the employees in the petitioned-for unit; their functional integration and contact; common supervision; the fact that most are hourly paid and all receive similar benefits, and that past bargaining history and area bargaining practice are supportive of the petitioned-for unit, I find that it is an appropriate unit for collective bargaining purposes with the modification discussed below regarding the sales lot technicians.

In reaching my conclusion that the petitioned-for unit is an appropriate unit, I have considered that the excluded employees work in the same department and are under the same supervision as petitioned-for employees, and that they have some degree of contact with them. However, given that the excluded employees perform work that is different in nature from that performed by employees in the petitioned-for unit; that all of the excluded employees are salaried and the service writers are also commissioned, unlike most of the unit employees; that there is no evidence of permanent or temporary transfers; and the collective-bargaining history and area bargaining practice supports their exclusion from the unit, I do not find that the evidence regarding common supervision and contact sufficient to warrant a contrary conclusion. In this regard, it is significant that the only evidence involving transfers supports a finding that the excluded employees share a community of interest that is distinct from that of the petitioned-for employees, as it consists of evidence that one of the service writers permanently transferred to become a service clerk and still substitutes as a service writer, and that the parts administrative clerk was formerly a service writer.

Parts Administrative Clerk Trisha Barros. I further note that particularly with regard to Parts Administrative Clerk Trisha Barros, my conclusion that she is properly excluded from the unit, is supported by the fact that she spends half her time working on a computer in an office that is on a separate floor from other unit employees, and that the other half of her time is spent interacting primarily with other excluded employees, that is, the service clerks and service writers. In addition, Barros's skills and functions differ from those of unit employees; she is salaried; was formerly a service clerk; and has never interchanged with any unit employees.

In reaching my decision in this case, I have also considered the case relied on by the Employer in arguing that the service writers must be included in the unit, *R. H. Peters Chevrolet, Inc.*, 303 NLRB 791 (1991), and find it to be distinguishable from the instant case. Thus, in *Peters*, the Board found that there was evidence that service advisors took the same yearly exam as mechanics; that mechanics sometimes substituted for absent service advisors; and that one mechanic had previously been employed as a service advisor. By contrast, the instant case contains no similar evidence showing a strong community of interest between the service writers and the service technicians.

Accordingly, I conclude that the petitioned-for unit is an appropriate unit without the inclusion of the service writers, service clerks and service cashiers and the parts administrative clerk.

The Sales Lot Technicians. With regard to the unit placement of the sales lot technicians, I find that they should be included in the unit. Thus, while these employees are separately supervised from other unit employees, they nevertheless work in the same facility and perform work which is substantially similar to the work of the service lot technicians. Although the record does not contain specific evidence regarding their terms and conditions of employment, it does show that they are hourly paid and receive the same benefits as the petitioned-for employees. To the extent the bargaining history of Schuman may be relevant to this determination, the Schuman Agreement covered the classifications called "car cleaner/washer" and "lot boy," and does not differentiate on its face between those working in the service or the sales department. Moreover, it appears from the record that the sales lot technicians may represent a residual grouping of employees who engage in manual labor involving cars and who would otherwise have no possibility for representation. In these circumstances, I find that the sales lot technicians share a sufficient community of interest with other unit employees to be included in the unit.

Service Lot Technician Sola Letoa. With regard to the unit placement of Service Lot Technician Sola Letoa, as indicated above, the Petitioner contends that he is not an employee of the Employer. However, the evidence in the record shows that Letoa was hired by the Employer on about September 30, 2005, and that he is currently performing the duties of a service lot technician for about eight hours a day. There is no evidence in the record to create a doubt about his employment status. Accordingly, he will be included in the unit.

- 5/ In the Regional Office's initial correspondence, the parties were advised that the National Labor Relations Board has expanded the list of permissible documents that may be electronically filed with the Board in Washington, DC. If a party wishes to file one of these documents electronically, please refer to the Attachment supplied with the Regional Office's initial correspondence for guidance in doing so. The guidance can also be found under "E-Gov" on the National Labor Relations Board web site: [www.nlr.gov](http://www.nlr.gov).